

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters
Helena, MT

JULY 13, 2006

Commission Members Present: Steve Doherty, Chairman (via teleconference call); Tim Mulligan, Vice-Chairman; John Brenden; Shane Colton; Vic Workman.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director, and FWP Staff.

Guests: See July 13, 2006 Commission file folder.

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of June 8, 2006 Commission Minutes**
- 3. Approval of Commission Expenses through June 30, 2006**
- 4. Raynolds Pass Fishing Access Easement – Final**
- 5. Sidney Bridge FAS Request for Oil & Gas Lease – Final**
- 6. Makoshika Rifle Range Relocation to Trust Land near Glendive - Endorsement**
- 7. Stranahan Land Acquisition in the Alberton Gorge Corridor – Endorsement**
- 8. 2006 Deer & Elk Quotas – Final**
- 9. HB454 Hunting Access Agreements (Swanz Ranch) – Final**
- 10. 2006 Upland Game Bird Seasons – Final**
- 11. 2006 Early Season Migratory Bird Regulations - Tentative**
- 12. Game Damage ARM - Final**
- 13. Stockstad and Davis Acquisitions Adjoining the Ninepipe WMA – Final**
- 14. Proposed Land Project – Sun Ranch – Endorsement**
- 15. Commercial Use Rules – Tentative**
- 16. Exotic Wildlife Classification for Importation / Possession - Tentative**
- 17. Public Opportunity to Address Issues Not Discussed at this Meeting**

1. Opening - Pledge of Allegiance. Vice-Chairman Mulligan called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

2. Approval of June 8, 2006 Commission Minutes.

Action: Colton moved and Brenden seconded the motion to approve the minutes of the June 8, 2006 Commission meeting with the notation that Brenden voted in opposition of the motion to approve the Department budget and legislative proposals. Motion carried.

3. Approval of Commission Expenses through June 30, 2006.

Action: Brenden moved and Colton seconded the motion to approve the Commission expenses as presented. Motion carried.

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Director Hagener stated that the September Commission meeting that is scheduled to be a conference call will not work well. An actual meeting is necessary, as the exotic wildlife rules need to be finalized, the non-resident combination license rules need action, and because of the oversell there will be discussion, and the Dutchman Clarkfork settlement will also be presented for discussion. Also, the date of September 21 conflicts with a meeting at the International level that several FWP staff must attend.

After discussion, it was decided to hold the September meeting in Helena on September 13. The October 19 meeting will be held in Miles City, and will include a work session to discuss the six items Commissioner Workman wishes to have addressed so that they could be included in the season setting process next year. Those six items are:

- \* Consider extending the pheasant season by two weeks in January
- \* Requiring two tags for ungulate species (one for head/antlers/horns and second for carcass)
- \* Mandatory reporting of previous years hunting and fishing harvest before purchasing licenses for the next year
- \* Open all WMAs for antler gathering at the same time during daylight hours
- \* Forcing hunters to choose between archery and rifle hunting. (Too much wounding by part-time archers)
- \* Issue a cow elk tag along with bull tags in special permit areas to encourage more take of cows.

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4. Raynolds Pass Fishing Access Easement – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that FWP has been offered a donation of a permanent fishing access easement, which would provide walk-in access to a mile-long, 50-foot-wide strip of land along the upper Madison River. The Easement would connect two existing FWP fishing access sites, Raynolds Pass and Three Dollar Bridge. This easement would allow the public to walk between these fishing access sites, and also to fish along the river throughout the length of the easement area. There is no cost to obtain this easement from the landowners. The environmental assessment, released on May 10, generated three comments of support.

Action: Mulligan moved and Workman seconded the motion to approve the Department's acceptance from Olliffe, LLC, of a donated public access easement, Raynolds Pass Fishing Access Easement, on the Madison River.

5. Sidney Bridge FAS Request for Oil & Gas Lease – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that the Sidney Bridge FAS, consisting of 2.37 acres in Richland County on the east side of the Yellowstone River, was acquired as a mitigation property by the Montana Department of Transportation in 1993 in the name of Fish, Wildlife & Parks. It is located in

the area commonly referred to as the Bakken Formation, which is an area of significant oil & gas interest. Last fall DNRC received a request from McCartney Petroleum to lease out the FAS for oil and gas production. DNRC handles these types of requests for state agencies at no cost.

A well was drilled in the area in February, 2006. Subsequent to an environmental assessment that generated no comments, FWP requested that DNRC offer the tract for competitive lease with a “no surface occupancy” stipulation that would disallow any lessee to use the surface of the FAS for mineral development or operation.

The highest bid received was \$12,087 from Headington Oil Limited Partnership. That does not include future 16.67% royalties or the annual rental fee of \$100.00. The FWP lease would be spaced into a well pool and become part of a communitization agreement. Royalties are pro-rated by acreage in the pool, so FWP’s share will be minor because of the small acreage. The lease, if approved by the Commission, would be initially for 10 years (without production necessary), but will continue automatically as there is production.

The initial lease fee and annual rental fees would be credited to the real property trust account, but royalty income would be credited to the FAS account since there are no federal aid ties associated with this site.

The lease will not effect other offsite oil and gas development in the area, and with no agreement, there would be no lease initiation fee or annual lease fees, and royalties would be reduced to 12.5% until payout of the well costs have been recovered.

Action: Brenden moved and Colton seconded the motion to approve the proposed lease between FWP and Headington Oil Limited Partnership at Sidney Bridge Fishing Access Site with a “no surface occupancy” stipulation.

6. Makoshika Rifle Range Relocation to Trust Land near Glendive – Endorsement. Joe Maurier, FWP Parks Division Administrator, explained that during development of the new Management Plan for Makoshika State Park, the relocation of the rifle range from the internal park area was an item of discussion. The existing rifle range located within the park is no longer an optimal situation given the proximity to the visitor’s center, trails, campground, and group use area. The Plan stipulates that the current range is to remain open until an acceptable relocation site is located, a development plan is completed, and the new range is built.

A citizens committee was formed in February, 2006 to look into potential sites in the Glendive area. Recently, that committee and FWP staff discovered a DNRC School Trust Land site, approximately five miles west of Glendive along Highway 200, that is acceptable to the committee and the community. Topographically, it meets the needs as well. As part of the EA process, a conceptual site plan will be completed to allow the community some insight into what is proposed. DNRC recommends a permanent easement at fair market value rather than entering into a lease agreement that will continue to escalate in cost. Additionally, information on grazing and mineral rights will be collected.

Colton said he is familiar with this proposal, and is pleased that things are moving so quickly. He added that the new range must be completed before the existing range is closed.

Action: Colton moved and Brenden seconded the motion to approve negotiations with the Department of Natural Resources and Conservation, and other area landowners or land management agencies, to acquire an interest in the school trust land near Glendive for the future development of a public rifle range. Motion carried.

7. Stranahan Land Acquisition in the Alberton Gorge Corridor – Endorsement. Joe Maurier, FWP Parks Division Administrator, stated that in 2004, the Department completed a complex four-way land exchange within the Alberton Gorge. This transaction placed 306 acres along the Clark Fork River into Department ownership. This recreational area is known as the Alberton Gorge Recreational Corridor, a seven-mile segment of the Clark Fork River located near the town of Alberton, approximately thirty miles northwest of Missoula.

The Alberton Gorge supports water-based recreation activities for thousands of users annually, and provides high-quality trout fishing as well as riparian habitat for black bears, deer, elk, eagles, osprey and many other species. Additionally, the parcel is accessible for bank and wade fishing on the Clark Fork River.

The 22-acre Stranahan Property, located in the upper reach of the Alberton Gorge Recreational Corridor, would make an excellent addition to the contiguous public lands held by the Department. Mrs. Stranahan purchased this 22 acres to keep it from being developed, and her desire is that FWP manage the site. An appraisal has not been conducted yet, but it is anticipated that it will appraise at approximately \$200,000. Mrs. Stranahan is not profit motivated – she only wants approximately what she paid for it plus interest and legal fees that she expended.

Action: Workman moved and Mulligan seconded the motion to approve preliminary negotiations for the purchase of the 22-acre Stranahan parcel in the Alberton Gorge Corridor. Motion carried.

8. 2006 Deer & Elk Quotas – Final. Don Childress, FWP Wildlife Division Administrator, Jeff Herbert, FWP Wildlife Division Assistant Administrator, and Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the Wildlife Division proposals.

DEER

Regions 1, 3, 4, 6, and 7

No recommended changes to the tentatives.

Region 2

Four recommended changes to the tentatives.

LPT 261-50: Decrease antlered buck mule deer permits from 50 to 25 (addition to tentatives).

LPT 270-00: Decrease antlerless Mule Deer B licenses from 350 to 200 (addition to tentatives).

LPT 270-01: Decrease antlerless Mule Deer B licenses from 350 to 200 (addition to tentatives).

LPT 270-50: Decrease antlered buck mule deer permits from 150 to 100 (addition to tentatives)

Region 5

LPT 575-00: Increase Mule Deer B licenses from 500 to 750 (addition to tentatives).

Action: Workman moved and Colton seconded the motion to approve the Regions 1 through 7 final Deer quotas as recommended by the Department.

Chairman Mulligan asked for public comment.

Action on Motion: Motion carried.

ELK

Regions 1, 3, 4, 5, and 7

No recommended changes to the tentatives.

Region 2

Two recommended changes to the tentatives.

LPT204-70: Decrease Antlerless Elk A7 licenses from 200 to 125.

HD 250 Cow Elk Harvest Quota: Decrease cow elk harvest quota from 150 to 125 (addition to tentatives).

HD 270 Cow Elk Harvest Quota: Increase cow elk harvest quota from 250 to 400 (addition to tentatives).

Region 6

Three recommended changes to the tentatives.

LPT 622-00: Decrease antlerless elk permits from 600 to 500 (adjustment to tentative).

LPT 631-00: Decrease antlerless elk permits from 150 to 120 (adjustment to tentative).

Colton asked if there would be secondary impacts, added pressure, on mule deer in HD622 due to the increased quotas. There are trophy deer in that area.

Harold Wentland, FWP Region 6 Wildlife Manager, said Regions 4, 6, and 7 met with the CMR regarding the increases. It was recommended to increase the quotas because the elk are at twice the objective. Hunting here is basically walk-in access because many roads are closed, and many ranches in the area are owned by out-of-state owners who restrict access, so it is felt that mule deer will not be greatly impacted. There will be FWP staff on the ground, and a full survey will be conducted next year to determine impacts. Wentland said they will survey the entire herd and if it this does not work. A9s may be the next option. CMR has closed several roads due to a variety of circumstances, and one landowner from MN is only open to people from MN.

Steve asked if access is a problem, how is increasing permits going to solve the problem, and how much CMR land is within one mile of a road? He is concerned with the jump in numbers. What are the mule deer numbers looking like? Are we losing the large mule deer that the breaks are famous for. What about HD425 on the Cobb Ranch?

Action: Doherty moved and Colton seconded the motion to set the antlerless quotas in HD410-00 to 400, HD621-01 to 200, HD621-02 to 200, and HD622-00 to 400.

Brenden disagreed, saying there are too many elk there, and he is not in favor of decreasing quotas.

Colton asked what percentage is having trouble and are leasing land and limiting access?

Wentland said one major landowner who was leasing is now in block management this year. Most private land is open to hunting and is in block management. The Minnesota landowner is a major problem. Opening BLM land should move the elk. Wentland said it takes a lot of walking to get to where the elk are. A fair amount of CMR land is within a mile of the road, but as it is not a straight or flat mile, so although people will get back in there, he doubts many deer will be packed out of there. Has seen no negative impact on the deer. They will do a total helicopter survey next year. Antlered bucks are looking good too.

Herbert asked if they operate on assumption of 50 percent success rate. Wentland said about 60% but he expects it to go down, but he expects more elk to be killed. He said 2,000 elk would have to be taken to get down to objective.

Wentland said CMR has a vegetation specialist, and he and Mark Sullivan, R6 Wildlife Biologist, have observed that the shrub species are depleting and will soon be eliminated due to ungulates browsing on them. The mule deer depend on shrubbery. CMR has agreed that a small reduction is needed and will not argue with FWP's recommendations.

Mulligan is concerned with decreasing the quotas in HD622 as people have already applied for tags in that area.

Action on Motion: Doherty withdrew his motion.

Action: Brenden moved and Colton seconded the motion to approve Regions 1,2,3,5,6, and 7 final Elk quotas as recommended by the Department. Motion carried.

Doherty asked about the concerns from folks from Choteau and by Joe Perry who were concerned about the public process in HD425 when the initial recommendations were made.

Kujala said FWP has had discussion on the matter of quota changes and how they occur. It is hoped that the creation of the Sun River working group can address both sides of the issues and come to a mutual agreement to alleviate future problems. The Department still supports the proposal of 5 either sex permits.

Action: Doherty moved and Workman seconded the motion to approve the Region 4 final Elk quotas as recommended by the Department. Motion carried.

9. HB454 Hunting Access Agreements (Swanz Ranch) – Final.

No recommended changes to the tentative.

Under the provisions of 87-2-513 MCA, FWP received the authority to issue either-sex or antlerless elk permits for management purposes to landowners that offer free public elk hunting, and who meet the various conditions of that act. The landowner must enter into a contractual public elk hunting

access agreement with the Department that defines the areas that will be open to public elk hunting, the number of elk hunting days that will be allowed on the property, and other factors that the Department and the landowner consider necessary for the proper management of elk on the landowners property.

Specifically, in return for allowing access to elk hunters, Mr. Swanz or a family member receive one 411-21 either-sex permit. FWP then issues 4 additional 411-21 permits by random drawing from the list of unsuccessful applicants for that license permit type (LPT). Successful applicants can only hunt on the Swanz deeded property.

All hunters that participated in this hunt on the Swanz property in 2003 were contacted about conditions encountered during their hunt. In 2003, three or four persons who received a permit actually hunted. By their accounts, Mr. Swanz met all obligations that were identified in the terms of his hunting agreement, and all three hunters were pleased with the quality of their experience. Mr. Swanz also allows other hunters on his property during the fall hunting season, and allows public access through his property as well via the block management program.

Action: Brenden moved and Colton seconded the motion to approve the Swanz Hunting Access Agreement for the 2006 general fall hunting season.

Colton stated that Mr. Swanz has been accommodating and hunters have been satisfied. This agreement could serve as a model for other landowners.

Mulligan asked why there aren't more of these agreements.

Alan Charles, FWP Landowner Sportsman Coordinator, said HB454 allows FWP to issue either-sex or antlerless elk permits for management purposes to landowners that offer free public elk hunting and who meet the various conditions of that bill. The landowner must enter into a contractual public elk hunting access agreement with the Department that defines the areas that will be open to public elk hunting, the number of elk hunting days that will be allowed on the property, and other factors that the Department and the landowner consider necessary for the proper management of elk on the landowners property.

The statute is limiting as it specifies permits rather than licenses, and the landowner receives a license. Several landowners have looked into it, but it is tailored so that it is not as useful as it could be. Charles said if landowners drew a license they may be more interested in participating.

Action on Motion: Motion carried.

10. 2006 Upland Game Bird Seasons – Final.

No recommended changes to the tentatives.

Under the conservation strategy the sage grouse adaptive harvest framework is dependant on males observed in specified leks in the spring. A year ago the number was below the trigger, but this year there was an increase. A meeting later this summer will be held to discuss revising the leks that are used to drive this process in order to secure a more representative distribution. Right now they are weighted to Region 5, and a more equal distribution of leks is needed.

FWP wants to separate the harvest packages into two different packages that would have discernable affects measured by harvest rate. Important to sage grouse is adult hen survival, nest success, and brood survival. Adult hen survival can be influenced by the effects of hunting. During the adoption of the sage grouse plan, there have been interests that suggest there should be no harvest of sage grouse.

FWP has had experience with the 3-bird bag limit, but most recently with the 2-bird bag limit, and it has been several years since there was a 4-bag limit. Six comments were received – two supported a longer season but not an increase in bag limits, and 4 were opposed to liberalization because of the status of the bird.

Wentland said he has done a block survey since 1989, and this year was the second highest number of male sage grouse he has seen in that time period. The males average 32 on the leks, but more leks need to become involved. There are not problems right now with grazing and mortality. He said he feels most hunters would be satisfied with fewer birds rather than an increase.

Much discussion ensued as to the pros and cons of increasing the bag limits, and what was felt the public wants. It is largely a social issue. Reproduction and recruitment are key to driving populations. There lies the possibility of listing the sage grouse in the future.

Action: Brenden moved and Workman seconded the motion to approve final 2006 Upland Game Bird Seasons as recommended by the Department. Motion carried. Three in favor and two opposed. (Doherty and Colton opposed).

11. 2006 Early Season Migratory Bird Regulations – Tentative.

Recommended regulations are as follows:

No changes from 2005 for Mourning Dove and Wilson's (Common) Snipe season dates and bag limits.

No changes from 2005 for Sandhill Crane bag limits.

Pacific Flyway Sandhill Crane Season Dates with Limited Permit: September 9 – September 17

Central Flyway Sandhill Crane Season Dates with Unlimited Permit: September 23–November 19

Central Flyway Sandhill Crane Season Dates with Limited Permit: September 9 – September 17

LPT 280-01 (Deer Lodge): Increase Sandhill Crane permits from 25 to 30.

LPT 284-01 (Ovando): Increase Sandhill Crane permits from 35 to 40.

LPT 380-01 (Dillon): Increase Sandhill Crane permits from 35 to 50

LPT 586-01 (Wheatland): Increase Sandhill Crane permits from 35 to 40.

Action: Colton moved and Workman seconded the motion to approve the 2006 Early Season Migratory Bird Regulations as recommended by the Department. Motion carried.

12. Game Damage ARM – Final. Alan Charles, FWP Landowner Sportsman Coordinator, outlined the rule and it's modifications. Four public hearings were conducted, and a 50-day comment period concluded in June. Forty-three comments were received, and were for the most part, supportive of the proposal. Rules are as follows (new information underlined and removed language stricken):

NEW RULE II (ARM 12.9.804) GAME DAMAGE HUNTS (1) remains as proposed.

(2) The following conditions apply to game damage hunts:

(a) through (h) remain as proposed.

(i) damage hunts may include the harvest of male and female game animals.

NEW RULE III (ARM 12.9.804A) GAME DAMAGE HUNT ROSTER (1) A game damage hunt roster will be utilized to provide a list of hunters available to participate in game damage hunts and management seasons, according to the following procedures:

(a) hunters interested in participating in game damage hunts and management seasons will apply through the department website between June 15 and July 15 annually. A roster will be established through a computerized random selection of applicant names, with roster results being made available on-line by August 1 annually. Hunters without internet access may apply at any department regional or Helena office between June 15 and July 15 annually. If necessary, the department may establish additional sign-up periods;

(b) through (2) remain as proposed.

NEW RULE IV (ARM 12.9.1101) MANAGEMENT SEASONS (1) and (2) remain as proposed.

(3) Management seasons may be implemented under the following conditions:

(a) hunting occurs during the time period August 15 through February 15;

(b) season will provide for dispersal and limited harvest of animals;

(c) hunting ~~will~~ may include opportunities for specified numbers of hunters to harvest either-sex and antlerless game animals;

(d) through (f) remain as proposed.

~~(3)~~ (4) Hunters eligible to hunt during a management season will be selected from the game damage hunt roster under procedures outlined in ARM 12.9.804A. If sufficient numbers of hunters cannot be identified through use of the game damage hunt roster, the department may utilize other established means of hunter selection, including first-come, first-serve advertised opportunities and unsuccessful special permit applicant lists.

4. The agency has amended ARM 12.9.802 with the following changes, stricken matter interlined, new matter underlined:

12.9.802 GAME DAMAGE (1) through (4) remain as proposed.

(5) In response to damage complaints qualifying for assistance under 87-1-225, MCA, and ARM 12.9.803, a regional supervisor may address the problem in the following ways:

(a) herding may be employed as a temporary measure;

(b) a variety of animal dispersal methods may be employed, such as airplanes, snowmobiles, cracker shells, and scareguns;

(c) repellents be employed as temporary solutions;

(d) fencing options may be utilized if the problem is chronic and involves haystacks, and other stored crops; and

~~(i) stackyards may be used as a permanent solution in cases where records show haystack damage occurs annually. The department will furnish the property owner with posts and wire. It is the landowner's responsibility to construct the fence and to provide proper maintenance. In situations where stackyards enclose several acres, particularly those surrounding round bales, permanent stackyards may not be the most desirable treatment of the problem;~~

~~(ii) electric fencing may be the most feasible solution in situations where a large area is being used as a bale stackyard as round bale storage. The department will provide the charger and fencing materials. On the initial installation, the department will assist in setting up the fence. The storage and care of this equipment is the responsibility of the rancher, and with proper care, materials should last three years. If game damage does not recur in succeeding winters, the department will pick up the charger for use in other areas;~~

~~(iii) if a haystack has straight sides, a four or six foot snowfence works well. In the case of elk, eight foot panels may be used. It is reasonable to assume the snowfence or panels will last for a minimum of three winters if properly cared for. Rolling and storage are the rancher's responsibility. Depending upon the size of the area and availability, the department will furnish the snowfence or panels, and the property owner will be responsible to put it up, take it down, and provide maintenance;~~

~~(iv) it will be the responsibility of the landowner to store materials furnished by the department in a manner consistent with proper care, with reasonable wear expected. A signed agreement with the landowner will record any planned actions and serve as a receipt for any materials that are provided. These agreements will be sent to the individuals. Fence fabric shall be returned to the department when it is no longer needed for protection from wildlife damage. Materials will be replenished when reasonable wear makes them ineffective;~~

~~(e) a kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits is issued. kill permits may be authorized by regional supervisors;~~

~~(5) (f) through (7) remain as proposed.~~

Mulligan said the intent is to use them outside of the season, but they can be used inside the general season as well. Charles said the rule is designed to accommodate those dates.

Action: Colton moved and Workman seconded the motion to adopt the final Game Damage rules as proposed by the Department. Motion carried. Four in favor – one opposed (Brenden opposed).

13. Stockstad and Davis Acquisitions Adjoining the Ninepipe WMA – Final. Don Childress, FWP Wildlife Division Administrator, explained that this proposal is a request for final approval for the fee-title acquisition of the 70-acre Stockstad property and the 65-acre Davis property adjoining the Ninepipe WMA in the Mission Valley. The cost for the 70-acre Stockstad property is approximately \$350,000, and the Davis 65-acre property is approximately \$325,000.

The project area contains important wetland and upland habitat within a complex of land protected by private landowners and state, federal, and tribal governments for wildlife conservation and hunting and birding-related recreation. FWP has worked closely with the CSKT Tribal Wildlife Program on upland bird and waterfowl conservation issues in the greater Ninepipe area. The project proposal received tentative approval from the FWP Commission and the Flathead Reservation Fish and Wildlife Board in the spring of 2005. The project would be funded with Habitat Montana funds. The acquired lands would become part of the Ninepipe WMA and be managed to provide a public recreation resource associated with the local wildlife populations. This proposal will go before the Land Board as well. Public meetings and the Environmental Assessment received only favorable comments.

Workman said this would make a nice acquisition, and the community is very supportive. Mulligan agreed it is a high priority to folks in that area

Action: Workman moved and Mulligan seconded the motion to approve the Stockstad and Davis project as proposed in the Decision Notice of May 29, 2006. Motion carried. Four in favor – one opposed (Brenden).

14. Proposed Land Project – Sun Ranch - Endorsement. Don Childress, FWP Wildlife Division Administrator, said this is a significant piece of property. The ranch has been around for a long time and is key to wildlife habitat. FWP has not had an opportunity to entertain any action on the ranch property until this time. Childress said this particular elk herd is significant in that many of them come from the Park and the Gallatin Valley. This land will never become lesser in value. Funding will come from Habitat MT as primary funding source, but Trust for Public Land and LWCF funding will also be sought.

Craig Jourdonnais, FWP Region 3 Wildlife Biologist, provided a Power Point presentation comprised of photos of the habitat and topographical features throughout the Sun Ranch.

The Sun Ranch lies between Indian Creek to the north and Papoose Creek to the south. These streams, as well as Moose, Wolf and Squaw Creeks are all major tributaries to the Madison River. The Madison River forms the western boundary of the ranch. The eastern limits of the ranch share a common 4-mile boundary with the Lee Metcalf Wilderness Area. This portion of the wilderness area is managed by the Beaverhead/Deerlodge National Forest.

Roger Lang, owner of the nearly 20,000 acre Sun Ranch located in the Madison Valley, is interested in negotiating a conservation easement with Fish, Wildlife & Parks. Approximately 7,000 acres are already protected through a conservation easement with The Nature Conservancy. Mr. Lang would like to pursue a conservation easement on 90% of remaining 11,600 acres that are presently unprotected.

Mr. Lang manages the Sun Ranch for fish, wildlife and domestic livestock by protecting and conserving the soil, water and vegetative resources. Mr. Lang places a high priority on conserving fish and wildlife habitat. He understands the role livestock grazing plays in managing wildlife habitat. Local and non-local Montana ranchers lease grass from the Sun Ranch for cattle grazing during the non-winter grazing season. Mr. Lang also holds active grazing permits for adjacent Forest Service lands.

A component of elk migrate out of Yellowstone National Park and winter in this portion of the Madison Valley. Public hunting for antlerless elk and a limited number of either sex elk occurs through a scheduled late season. Also, the use of A-9/B12 licenses occurs during a late hunting period.

Because of the high habitat values of the Sun Ranch, it provides significant big game winter range for elk, mule deer, white-tailed deer, moose, pronghorn, bighorn sheep and mountain goat. This ranch is managed to attract and support large numbers of wintering elk. Herds numbering over 2,000 elk are not uncommon on the Sun Ranch during the winter and early spring.

A wolf pack known as the Wedge Pack, use the Sun Ranch as an activity center during fall, winter and spring. The Ranch provides excellent habitat for Grizzly and black bear during the spring and fall, and year-round habitat for mountain lions. The Ranch is trying to find ways to successfully graze domestic livestock in a predator-rich environment.

The ranch provides outstanding habitat diversity that includes coniferous forests, aspen groves, riparian stringers and sagebrush grasslands. The Ranch provides habitat for over 20 species of neotropical migrant songbirds. Blue and ruffed grouse are found on the ranch, along with Hungarian partridge, sharp-tailed grouse and sage grouse. Several species of raptors use the ranch seasonally (i.e. bald and golden eagles, red-tailed and rough-legged hawks, goshawks and osprey). Fur species such as wolverine, pine marten, beaver, bobcat, and river otter also frequent the property.

Specific streams on the Ranch support Westslope cutthroat trout and the Ranch provides brood-rearing ponds to assist FWP's efforts in Westslope cutthroat trout restoration

Childress said it had been an outfitted ranch, but the landowner has recognized that block management will be a part of his management program as well as public access during the 5-week season. A managed hunt will be offered to provide public opportunity.

Tim said public access is a significant part of this, and of all the conservation easements FWP has done to benefit elk migration, this one rates at the top.

Childress introduced Eric Love, Program Director for the Trust for Public Lands, who maintain an option to acquire these easements with Roger Lang. The property has not been appraised yet. He said the funding scenario is that one quarter of the funding to purchase of the easement would come from FWP, and one quarter would come from Land and Water Conservation Funds. They hope to rank this easement as number one in the nation. LWCF money is not taxpayer driven but from offshore oil and gas lease revenues. His organization feels that whatever the funding climate is, this project will garner support necessary for the funding.

Mulligan said if FWP pays a quarter, and LWCF pays a quarter, that means the landowner is donating over half the value. Love said that was correct. The value of land is not going to go down, and the opportunity to purchase the value of the easement at 25%, with landowner donation and match money, is a relatively small investment to secure a large area of habitat protection.

Childress stated that there is approximately ten million dollars in the Habitat Montana account, and that takes into account the investment in the Stockstad Davis acquisitions. FWP will manage the easement. Childress stated that FWP will obligate the funds and operate within an 18-month timeframe. FWP will not tie up all of the monies so that other projects cannot be entertained. If negotiations are completed to everyone's satisfaction, FWP would close on its portion with the commitment that the funding from the federal side would follow.

Action: Colton moved and Mulligan seconded the motion that the Department pursue a conservation easement on a portion of the Sun Ranch as outlined in the proposal, and allocate up to \$4.5 million of Habitat Montana funding for the project over the next eighteen months.

Commissioner Mulligan asked for comments from the public. There were none.

Action on Motion: Motion carried. Four in favor – one opposed (Brenden).

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Hagener reminded the Commissioners that the final Bison regulations and quotas would be decided on in August. Over the last month FWP has attempted to hold discussions with the Nez Perce Tribe to find out what their intentions are, but have been unsuccessful in this endeavor. Hagener said he had spoken with Senator Frank Smith, the sponsor of the bill to issue licenses to the tribes, who said the intent of the bill was to return unused tribal licenses to the general license pool. If additional permits are issued, the problem arises as to when the season would be as there are already five timeframes for seasons.

**15. Commercial Use Rules – Tentative.** **Chris Smith, FWP Chief of Staff**, explained that FWP was directed by the Commission in 2005 to develop rules to govern commercial use on lands under the control, administration and jurisdiction of FWP. It has been a very complicated process, but rules have now been drafted for Commission consideration. The proposed rules would be used to evaluate requests to conduct commercial use, to administer authorized use, and to create a fee schedule for approved uses.

**Charlie Sperry, FWP Recreation Management Specialist**, stated that prior to drafting the rules, nine public scoping meetings were held regionally, as were meetings with outfitters and guides associations and sportsmen's groups. Meetings within the agency were held as well. Sperry gave an overview of nine key issues.

Commercial Use on Wildlife Management Areas. Commercial use on Wildlife Management Areas was the most contested and controversial issue, and received the most comments. A wide range of viewpoints was offered on how to handle the commercial use on WMAs. Because of the wide array of interests, the Department felt it best to provide two alternatives for consideration. Alternative #1 prohibits hunting outfitting on all Department lands and identifies criteria for evaluating proposals to conduct and manage non-consumptive commercial use on FWP lands, including WMAs. Alternative #2 prohibits all commercial use on WMAs and hunting outfitting on other Department lands, and identifies criteria for evaluating proposals to conduct and manage other types of commercial use on Department lands.

Workman asked if it wouldn't be best to have only one alternative, and then go from there. He asked which alternative the Department would favor. Hagener said FWP would probably advocate no commercial use on WMAs, however commercial activity is already occurring on some Department lands. Some activities are non-consumptive and have not been a problem so the question arises as to whether there should be a charge for that use or should it be stopped entirely. Workman suggested no commercial use on WMAs, then address exceptions on a case-by-case basis.

Colton said offering two alternatives isn't much different than the process normally done during the standard rulemaking process. Mulligan suggested that there be a preface in the rule explaining why there are two options. Sperry said when the rule is submitted to the Secretary of State, it will explain why there are two alternatives.

Applicability of the Rules to Nonprofit Organizations. The rules would apply to nonprofit organizations if they are collecting money from their members or participants for the use of FWP sites. FWP may waive the fees on a case-by-case basis if the sole purpose of the use is for educational purposes and the monetary benefits do not exceed what it costs to hold the activity. The Department could also waive fees when nonprofit organizations assess more money than it takes to hold the event, but then puts the money back into the site.

Vehicle Transfer Services. This is the shuttle or transfer of vehicles from one FWP site to another. What FWP proposes is that they obtain a permit if they use our sites, they must pay a fee, and the Department may require proof of insurance that indemnifies the State from liability. The reason is that they are conducting commercial business on the Department's land, and the permit would also enable FWP to know who and how many folks are out there. A challenge has arisen relative to insurance and liability. Once they are under a permit and charged a fee, risks arise for the Department. The Department has learned that the availability of insurance for shuttle companies is limited and cost prohibitive.

Mulligan asked which groups would need proof of insurance. Sperry said FWP may require proof of insurance for restricted use permits – water based outfitters and guides, tours, vehicle transfer services, and any other type of use that falls under restrictive use permits. Mulligan asked if boy scouts, shooting groups, and those retrieving game are included. Sperry said the wording is that FWP may require insurance based on the level of risk. The rule does not single out each use that FWP would or would not require liability insurance. FWP would not have to require insurance if it doesn't require a permit or charge a fee. Mulligan asked if the risk changes when permits are required.

Becky Dockter, FWP Legal Counsel, said there are many different factors involved when there is a risk analysis conducted so there is no yes or no answer. One factor to consider is how much control FWP would have over a certain activity. As far as a permit and a fee to allow access onto FWP FAS sites, there is not an appreciable amount of risk. If the Department asserts control on how people do their jobs, then the risk goes up and there is more liability if something goes wrong.

Colton said we are not endorsing people as outfitters or guides. He questioned what insurance the individual guides and outfitters have that would satisfy FWP. He is concerned for the Department in that after someone has provided proof of insurance and something goes wrong, the permit indicates the applicant had adequate insurance but actually did not. He questioned if FWP really needs the requirement of proof of insurance. That may be taking on more of an obligation than FWP wants to take.

Mulligan asked if FWP currently requires proof of insurance on the Albion Gorge and the Smith River for boating, rafting and fishing. Sperry replied to the affirmative. Not for shuttles, but for boating and rafting companies. The Blackfoot River permit system is meant to include shuttle drivers as well. Sperry stated that the rules contain the word may rather than shall as there may be situations where the risk does not warrant insurance.

Workman said the restrictions are being imposed on the citizens' of Montana's land, not FWP's land.

Colton said that “commercial use” needs to be viewed as a disproportionate use by a segment of the population. He is reluctant to incorporate shuttle drivers into this as their service does not add that much impact to the FAS. The vehicles are already there, they are not taking more room but are removing vehicles. It needs to be more impact driven. Those who are impacting the land and are making money off of this impact to the land should be charged and permitted. High impact requires enhanced maintenance.

Smith agreed that FWP needs to continue to recognize that the lands belong to the citizens of Montana. These rules do not restrict use on the lands or FASs, and do not limit the number of commercial users. WMAs may be restricted on use or access depending on what the Commission decides.

Workman questioned if the Department has looked into what sort of income might be generated. He asked if hiring new employees will be necessary to administer these rules.

Relationship between Commercial Use Rules and Statewide River Recreation Rules. Sperry said the statewide river recreation rules are the rules used to govern recreation on rivers in Montana. The commercial use rules are not to be used for restricting, rationing, or prohibiting use on rivers. The ration and allocation of river use shall be governed by the statewide river recreation rules.

Mulligan asked, other than the fee aspect, how this will impact the river outfitters and guides. Sperry replied that they would have to apply for a commercial use permit. There are two types of permits. There is a generic one where you pay your fee and receive a permit, and there is a restricted use permit where there is a different fee. The Department has the ability to impose insurance requirements. If the Department were to go through a rulemaking process developing a management plan when it has become necessary to restrict or ration use on a river, then that would trigger the use of restricted use permits.

Workman questioned if once FWP sells a permit to use a FAS and the permit holder cannot use the permit because the FAS is full, is there any guarantee to them other than first come first serve.

Dockter said the only thing guaranteed by the permit is access to the FAS. There is no guarantee that the access site will not be full.

Sale or Transfer of Commercial Business, Permit, or Individual Units of Use. Sperry said a commercial use permit is not transferable. If a person sells their business in its entirety, the Department may issue a new commercial use permit to the new owner as long as they agree to the terms of the permit.

Brenden said the rules say may, therefore there is no consistency – the decision to issue a permit to a new owner is subjective.

Sperry said if the word shall is inserted, that would mean every time a business transfers in its entirety, FWP would automatically have to issue a permit to the new owner. The word may is used because permits are not a property right – they are an opportunity to conduct business on public land. Mulligan said this is consistent with most business licenses, such as liquor licenses, food licenses, etc. Much discussion ensued as to may and shall and transferability of businesses.

Smith said the issue is to avoid the creation of a permanent property right through the permit in the use of a public resource. If a business transfers, and the permit transfers automatically, as long as the terms of the permit remain the same, it would be acceptable, because it has been built into the system that no restricted use permit shall be valid for more than five years. The maximum property interest that anyone would have in use is a five-year term. At the end of that five-year term, that permit is subject to reconsideration by FWP. There is no reason to transfer a fishing access site permit, as there is no limit on them. Transferability only applies to restricted use permits.

Brenden preferred the word shall. People have to live up to stipulated conditions, if they do not, there are remedies to handle that. Mulligan said the rules state that a permittee can lose the permit if they do not live up to the terms within.

Smith asked if the Commission would prefer the word shall in the rules if there is time left on a restricted use permit and a business transfers so that the new owner would automatically be entitled to the same terms as the pre-existing owner under the permit. Mulligan said this applies mostly to fishing outfitters and is an ongoing thing. The law spells that out. If the Commission tries to limit or change something, the statewide river recreation rule applies.

Sperry said the Commission adopted rules to prohibit individual units of use on the Beaverhead and BigHole Rivers where permitted outfitters sold or leased client days to another outfitter who was not permitted. The commercial use rules propose to adopt the language for all commercial use that permittees may not sell, lease or receive compensation for the opportunity to use an individual unit of use.

*The Commission directed the Department to change the word “may” to “shall.”*

Status of Existing Permit Systems. Sperry said some of the existing outfitters are under special regulatory systems already. The rules would allow FWP to waive the commercial use permit requirement if the person is authorized under another form of permit or contract issued by FWP or other government agency.

Permit Fees. The rules would allow FWP to waive fees on a case-by-case basis when the purpose is educational and the proceeds do not exceed the cost of providing the function, or when the proceeds are allocated back to the FWP site. The proposed fees are based upon a percentage of the average cost per client or outfitted person per day.

There are two categories of fees. One is for FAS permits, at a cost of \$150 per year for outfitters, \$25 per year for guides, and \$75 per year for vehicle transfer services. The fees were derived through comparison with other state and federal agencies. The proposed fees are as follows (see table):

| <b>Primary Type of Use:</b>                                                                                  | <b>Fishing Access Site Permit Fee:</b> | <b>Restricted Use Permit Fee<sup>1</sup>:</b>                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Water-based Outfitter: Angling</b>                                                                        | \$150/year                             | 3% of unadjusted income;<br>or<br>\$5 per client day <sup>2</sup> .                                                                                                          |
| <b>Water-based Outfitter: Non-angling</b>                                                                    | \$150/year                             | 3% of unadjusted income;<br>or<br>\$2 per client day <sup>3</sup> .                                                                                                          |
| <b>Water-based Guide</b>                                                                                     | \$25/year                              | \$25/year                                                                                                                                                                    |
| <b>Guided Tour or Trip</b>                                                                                   | N/A                                    | 3% of unadjusted income;<br>or<br>\$7 per client day <sup>4</sup> .                                                                                                          |
| <b>Still Photography</b>                                                                                     | N/A                                    | \$25/year <sup>5</sup>                                                                                                                                                       |
| <b>Documentary Motion Pictures</b>                                                                           | N/A                                    | \$50 application fee <sup>6</sup> ; and<br>\$50/day: 1 – 5 person crew<br>\$100/day: 6 – 25 person crew<br>\$200/day: 26 – 50 person crew<br>\$300/day: over 50 person crew  |
| <b>Major Motion Picture</b>                                                                                  | N/A                                    | \$50 application fee <sup>7</sup> ; and<br>\$150/day: 1 – 5 person crew<br>\$200/day: 6 – 25 person crew<br>\$300/day: 26 – 50 person crew<br>\$400/day: over 50 person crew |
| <b>Special Events, Vendors</b>                                                                               | N/A                                    | 3% of unadjusted income;<br>or<br>\$10 - \$50 per day <sup>8</sup> .                                                                                                         |
| <b>Non-service Use; e.g., construction related use, water pumping, commercial mushroom or berry picking.</b> | N/A                                    | \$10 - \$300 per day <sup>9</sup> .                                                                                                                                          |

<sup>1</sup> Department would have the option to charge a minimum fee of \$90 when implementing a joint permit system with federal government on restricted use rivers.

<sup>2</sup> \$5 per client fee based on 3% of \$180 (estimated average cost per day per client).

<sup>3</sup> \$2 per client fee based on 3% of \$75 (estimated average cost per day per client).

<sup>4</sup> \$7 per client fee based on 3% of \$250 (estimated average cost per day per client).

<sup>5</sup> Fee based on department's Filming Policy.

<sup>6</sup> Fees based on department's Filming Policy.

<sup>7</sup> Fees based on department's Filming Policy.

<sup>8</sup> Fees represent the range of fees currently charged by the department for these uses.

<sup>9</sup> Fees based on department's assessment on a fair compensation for non-service related use of department lands.

The money will be spent in the program in which it was generated. FWP estimates that there will be approximately 1,465 permittees with FAS permits, which would generate approximately \$108,000 per year. FWP estimates 914 permittees for the restricted use permits (not including Alberton Gorge, the Blackfoot or Smith Rivers), which would generate approximately \$123,000 per year.

Smith said most commercial use permits will be FAS permits. Program code changes will need to be made to the automated licensing system, but no more work will be required other than to sell another type license, so additional staff will not be required. The revenue would provide the opportunity to hire additional staff to address management issues out on the ground, but that would only take a small portion. Funding the river recreation management program has been a major challenge for FWP. This process will provide an additional revenue source for FWP to address those needs.

Colton said vehicle transport should not be included in the commercial rule. He sees significant difference between switching people at sites, and switching cars at sites. Obtaining insurance may put folks out of business. Mulligan sees a significant difference between transporting people to a site and switching cars around the sites as far as impact and risk. If it is presented as a tentative, shuttle folks may provide ideas. He does not advocate the requirement of insurance, which may put people out of business.

*Action: Workman moved and Colton seconded the motion to remove vehicle transfer service from the commercial use rules.*

Public comments:

Robin Cunningman, FOAM, said shuttle people would be put out of business by liability insurance purchases. One agency in Montana charges \$1000 per driver.

Larry Copenhaver, Montana Wildlife Federation, said he was concerned about the requirement of an ALS number for shuttle drivers. He asked if they are required to have a fishing license?

Smith replied that they are not required to purchase a fishing license to obtain an ALS number.

Doherty questioned if the public dislikes both alternatives and develops a third option, will another comment period be necessary.

Becky Dockter, FWP Legal Counsel, explained that the purpose of the two alternatives is to cover all the bases. As long as FWP is able to encompass minor changes into the final rule and can justify if they are similar to what was proposed, another comment period would not be required.

*Action on motion: Motion carried. Four in favor – one opposed (Doherty).*

Repeal of Livestock and Commercial Use Regulations. Sperry said the proposal is to repeal the existing rule for livestock and commercial use. Adopting these new rules would make the old existing rule no longer needed. Repealing the exiting rules would be a part of it.

*Action: Workman moved and Colton seconded the motion to repeal the livestock and commercial use rules and replace them with the new commercial use rules.*

Sperry said if the livestock and commercial use rules are repealed and these new rules are adopted, the land lease-out policy would still cover the other types of livestock issues. The Commission will still retain the authority to approve grazing leases.

*Action on Motion: Motion carried.*

Implementation Date. Sperry said if these rules are adopted by the end of 2006, it is FWP's recommendation to implement them by 2007.

Mulligan asked about the total prohibition of outfitted hunting where a water body is surrounded entirely within the boundaries of FWP land. Sperry said on a water body entirely surrounded by FWP lands, commercial hunting would be prohibited. On a river scenario where a FAS is used, the river is linear to the FAS, hunting outfitting is not affected.

Mary Ellen Schnurr, MOGA, said there are a considerable amount of FWP acres intermingled and surrounded by federal land, and outfitters with federal permits hunt there. There are some places where outfitting has gone on for many years and people think they are on Forest Service land and outfitters are paying for all of their uses there.

Kurt Alt, said the Gallatin Wildlife Management Area was purchased in 1945, and the outfitting industry is aware there is no outfitting on that WMA. They have always been denied access on those sections and have been cited – it is not a permitted activity but there is illegal activity. We are in the process of consolidating those lands in the near future.

Mulligan asked how it applies to conservation easements and block management that the Department has interest in. Sperry replied the rules will not apply to conservation easements or block management.

*Workman moved and Colton seconded the motion to approve the tentative commercial use rules with the three amendments that were made and carried for both alternatives.*

- 1. Add language stating that rules do not apply to conservation easements or block management.*
- 2. Exclude vehicle transfer services from rules.*
- 3. Change "may" to "shall" pertaining to transfer of a permit.*

Public comment:

Robin Cunningham, FOAM, said that eliminating shuttles from the rules will make them happy. If fees are based on impacts, the differential pricing for outfitters and guides is unfair. One single flat fee of \$75 would be fair and generate the same money. In addition, FOAM recommends that FWP use the restricted use permit fee money for the particular river where the fees were generated.

Larry Copenhaver – pleased that many of their concerns have been addressed in these rules. Definitions of commercial use sounds like a contradiction. Are permits needed to hold meetings and services such as lunch delivery etc? He asked if a boat supplier is in the same category as a transfer service since a raft is dropped off at one end of the river and picked up at the end of the float.

Mary Ellen Schnurr – puzzled about why there is a separate fee for guides that is not consistent with federal rules.

Wayne Johnston said there are situations where there are access permits around Hebgen Lake where a forest service permit is issued to a business and not an individual person which takes away the need for an outfitter. The outfitter is responsible for the clients, but the business has the permit. If there is a falling out, then the outfitter is responsible, but the owner has the permit.

Mulligan and Sperry said anyone acting as a guide must have a permit.

*Action on Motion: Motion carried. Brenden opposed. Four in favor – one opposed.*

**16. Exotic Wildlife Classification for Importation / Possession – Tentative.** Tim Feldner, FWP Enforcement Division Wildlife Permit Manager, and Eilene Ryce, FWP Fisheries Division Aquatic Nuisance Species Coordinator, presented the exotic wildlife proposal. Senate Bill 442 requires the classification of exotic wildlife before the species can be imported into the state and establishes a mechanism for the classification. The law created a review committee composed of members from Fish, Wildlife and Parks, Department of Livestock, Department of Agriculture, Department of Public Health and Human Services, a representative of the pet trade, and a citizen to evaluate petitions for the classification of exotic animals.

The Classification Review Committee recommends that the Rules be adopted by the Commission to allow for the following classification of exotic wildlife:

Uncontrolled: the following exotic wildlife may be imported, possessed, sold, purchased, exchanged, or transported in the state without a permit:

Serval Cat (*Leptailurus serval*)

Degu, Brush Tailed Rat (*Octodon degus*)

Two-Toed Sloth (*Choloepus didactylus*)

Jungle Cat (*Felis chaus*)

Controlled: the following exotic wildlife may be imported, possessed, sold, purchased, exchanged, or transported in the state with authorization from the Department and if all control measures are met:

Koi (*Cyprinus carpio*) for use in outdoor ponds

Goldfish (*Carrassius auratus*) for use in outdoor ponds

Exotic Waterfowl (family Anayidae)

Prohibited: the importation, transportation or possession of the following species of live wildlife or hybrids thereof, including viable embryos or gametes, is prohibited:

Zander (*Sander lucioperca*)

Walking Catfish (*Clarias batrachus*)  
Short Tailed Opossum (*Monodelphis domestica*)  
Virginia Opossum or North American Opossum (*Didelphis virginiana*)  
Brush Tailed Possum (*Trichosurus vulpecula*)  
Southern Flying Squirrel (*Glaucomys volans*)  
Primates (family Cebidae)  
Mute Swan (*Cygnus olor*)

The Classification Review Committee also recommends adoption of new rules designed to provide 1) procedures necessary to obtain a permit to possess a controlled exotic species and 2) requirements for the care and housing of exotic wildlife held in captivity.

Brenden asked why the great big constrictor snakes are not banned from Montana. Feldner said the committee addresses a species after someone asks about it. The committee has discussed the constrictor snakes but has not added them to the list yet. Brenden said they should be addressed. Feldner affirmed that the snakes will be added to the list.

Feldner said those people who already own them will be grandfathered in, however they will be required to register them, and they cannot sell them to anyone else in Montana.

*Action: Colton moved and Workman seconded the motion to approve the classification of exotic species as recommended by the classification review committee and the new rules for permitting possession of controlled species and for the care and housing of those species held in captivity and proceed with the administrative rule making process. Motion carried.*

**17. Public Opportunity to Address Issues Not Discussed at this Meeting.** There was none.

Meeting adjourned at 3:05 p.m.

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**Tim Mulligan, Acting Chairman**

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**M. Jeff Hagener, Director**